

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ADAM R. DeLEON,)	Case No.: 3:06 CV 3020
)	
Petitioner)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
ERNIE MOORE, Warden,)	
)	
Respondent)	<u>ORDER</u>

On December 19, 2006, Petitioner Adam R. DeLeon (“DeLeon” or “Petitioner”) filed a Petition for Writ of Habeas Corpus (“Petition,” ECF No. 1) pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction for one count of possession of cocaine. DeLeon argues that his Petition should be granted based on the following grounds: (1) the state trial judge unconstitutionally enhanced his sentence beyond the statutory minimum by judicial fact finding; (2) he received ineffective assistance of trial counsel; and (3) he received ineffective assistance of appellate counsel. (*See* Petition at 6-9.) This court referred the case to Magistrate Judge William H. Baughman, Jr. for preparation of a Report and Recommendation. On April 25, 2007, Respondent Ernie Moore (“Respondent”) filed a Return of Writ.

Magistrate Judge Baughman submitted his Report and Recommendation (ECF No. 9) on November 18, 2008, recommending that DeLeon’s Petition for Habeas Corpus under 28

U.S.C. § 2254 be denied. First, he found that DeLeon, by not presenting each of these grounds for relief to the Ohio Supreme Court, failed to fully exhaust his claims as is required before pursuing a petition for writ of habeas corpus in federal court. *See* 28 U.S.C. § 2254(b). Second, he found that even if he fully exhausted all grounds for relief, the Petition was still meritless.

As of the date of this Order, Petitioner has not filed objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds that after *de novo* review of the Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 9.) DeLeon's Petition is hereby denied, and final judgment is entered in favor of the Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.

UNITED STATES DISTRICT JUDGE

December 11, 2008